

SYNOPSIS

PERSONAL INCOME TAX -- TAXPAYERS' FAILURE TO CARRY BURDEN OF PROOF -- The failure of taxpayers to articulate adequate grounds in their petition for reassessment justifying their claim, combined with their failure to appear at a hearing and to present any evidence respecting their claim, will result in a denial of relief to the taxpayer. *See* W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003).

FINAL DECISION

On September 10, 2004, the Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued an assessment for personal income tax against the Petitioners. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the year 2001, for tax, interest, computed through September 10, 2004, and additions to tax, for a total assessed tax liability. Written notice of this assessment was served on the Petitioners.

Thereafter, on October 21, 2004, the Petitioners timely filed a petition for reassessment with this tribunal, the West Virginia Office of Tax Appeals. Subsequently, notice of the evidentiary hearing in this matter was furnished to the Petitioners by letter dated November 8, 2004, sent to the mailing address shown on their petition for reassessment. This notice of the evidentiary hearing was served upon the Petitioners on November 10, 2004, as evidenced by United States Postal Service Form PS 3811, August 2001, Domestic Return Receipt (the "Green Card") signed for.

At the time scheduled for convening the evidentiary hearing, there was no appearance on behalf of the Petitioners. The hearing was held, however, without an appearance on behalf of the Petitioners, in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002] and 121 C.S.R. 1, § 69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. The petition for reassessment filed on behalf of the Petitioners in this matter was filed by the female Petitioner in this matter.

2. In the petition for reassessment filed on behalf of both Petitioners, she makes no assertions respecting the merits of the assessment against her and her husband. She merely asserts that he is the taxpayer and that he is incarcerated in a federal penal institution.

3. The Petitioners were provided with notice that they were required to appear at the evidentiary hearing and present evidence respecting the reasons they believed that the assessment against them was erroneous, unlawful, void or otherwise invalid.

4. The Petitioners did not appear at the time and place of the hearing and presented no evidence respecting any of their allegations.

5. There being no grounds articulated by the Petitioners respecting the merits of the assessment, they have failed to show that the assessment is erroneous, unlawful, void or otherwise invalid.

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the Petitioners to show that any assessment of tax against them is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003).

2. The Petitioners in this matter have failed to carry their burden of proving that any assessment of taxes against them is erroneous, unlawful, void or otherwise invalid.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioners for the year 2001, for tax, interest, computed through September 10, 2004, and additions to tax, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], **interest accrues** on this personal income tax assessment until this liability is fully paid.